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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MONTANA
HELENA DIVISION**

TRACEY WHEELER,) Cause Number CV-21-
Plaintiff,	
vs.	
EAGLE MOUNT - BOZEMAN,	
Defendant.	
) COMPLAINT AND
) DEMAND FOR JURY TRIAL
)
)

COMES NOW the plaintiff Tracey Wheeler, through her counsel of record Geoffrey C. Angel, and for her claims for relief alleges as follows:

NATURE OF ACTION

1. Tracey Wheeler brings these claims against Eagle Mount-Bozeman for wrongful discharge in violation of Section 39-2-911, et seq. Montana Code Annotated and the Age Discrimination in Employment Act, 29 U.S.C. §§ 621 et seq.
2. Eagle Mount - Bozeman is a domestic non-profit Montana corporation.
3. Tracey Wheeler is a citizen, resident and domicile of Bozeman, Gallatin County, Montana.

1 4. Ms. Wheeler worked for Eagle Mount Bozeman for over 19 years as
2 its Finance Director.

3
4 5. On or about January 27, 2020 Eagle Mountain terminated
5 Ms. Wheeler after 19 years for the stated reason “she exhibited poor
6 attitude and poor communication toward staff.”

7
8 6. Personal attitude is not good cause for discharge.

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10 7. The discharge with without good cause.

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12 8. The discharge was a pretext for discrimination based on age.

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14 **APPLICABLE FEDERAL LAW**

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16 9. This Court has subject matter jurisdiction pursuant to 18 U.S.C. §§
17 1962, 1964(a)(equity); and 28 U.S.C. § 1367(a)(supplemental
18 jurisdiction).

19
20 10. Jurisdiction is also proper in Federal District Court under 28 U.S.C. §
21 1331 because this case presents a federal question. The state law
22 claims are properly included under supplemental jurisdiction pursuant
23 to 28 U.S.C. § 1367.

24
25 11. Venue is proper in the Butte Division of the Federal District of
26 Montana because plaintiff is a resident of Bozeman, Gallatin County,
27 Montana
28

APPLICABLE STATE LAW

12. Plaintiff's claims are also being brought pursuant to Montana Code Annotated §§ 39-3-401 et seq, the Minimum Wage and Overtime Compensation Act and the statutory and common law concerning wrongful discharge and breach of contract.

COUNT-1-WRONGFUL DISCHARGE FROM EMPLOYMENT ACT

13. Plaintiff realleges and incorporates by reference paragraphs 1 through 12 as if fully set forth herein.

14. Plaintiff's discharge was in retaliation for refusing to violate public policy and for reporting a violation of public policy in violation of Section 39-2-904(a), Montana Code Annotated. .

15. Plaintiff's discharge was not for good cause in violation of Section 39-2-904(b), Montana Code Annotated. .

16. Defendant violated the express provisions of its own written personnel policies in its discharge of plaintiff in violation of Section 39-2-904(c), Montana Code Annotated.

17. Defendant is guilty of actual malice as defined in MONT. CODE ANN. §§ 27-1-220 and 221 in that Defendant had actual knowledge that its failure to comply with the provisions of MONT. CODE ANN. § 33-18-201 would create a high probability of injury to Plaintiff and yet continued to act deliberately in conscious or intentional disregard of that high probability of injury to Plaintiff.

1 18. Defendants acted with knowledge of facts or intentionally
2 disregarded facts that created a high probability of injury to Plaintiff
3 and:(a) deliberately proceeded to act or failed to act in conscious or
4 intentional disregard of the high probability of injury to Plaintiff; or
5 (b) deliberately proceeded to act or failed to act with indifference.
6

7 19. Defendant acted with fraud as defined in MONT. CODE ANN. §§ 27-1-
8 220 and 221 in its misrepresentation and concealment of material
9 facts in its discharge of plaintiff.
10

11 **COUNT-2-AGE DISCRIMINATION IN EMPLOYMENT ACT**

12 20. Plaintiff realleges and incorporates by reference paragraphs 1 through
13 19 as if fully set forth herein.
14

15 21. Defendant terminated Ms. Wheeler due to her age in violation of the
16 Age Discrimination in Employment Act, 29 U.S.C. §§ 621 et seq.
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18
19 **DEMAND FOR TRIAL BY JURY**

20 Plaintiff demands trial by jury on all issues of this action.
21

22 DATED this 28th day of January 2021

23 ANGEL LAW FIRM
24

25 /s/ Geoffrey C. Angel
26 Geoffrey C. Angel
27 ANGEL LAW FIRM
28 Attorney for Plaintiff